

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOHN BRAUNDMEIER, and KEVIN
WALLACE on behalf of themselves and all
others similarly situated,

Plaintiff,

v.

ANCESTRY.COM OPERATIONS INC., a
Virginia Corporation; ANCESTRY.COM INC.,
a Delaware Corporation; ANCESTRY.COM
LLC, a Delaware Limited Liability Company;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 1:20-cv-07390

Hon. Virginia M. Kendall

**DECLARATION OF TODD GODFREY IN SUPPORT OF MOTION TO COMPEL
ARBITRATION AND STAY**

I, Todd Godfrey, declare as follows:

1. I am Vice President of Global Content for Ancestry.com Operations Inc., a wholly-owned subsidiary of Ancestry.com Inc. Ancestry.com Inc. is the parent of Ancestry.com Operations Inc. In this declaration, I collectively refer to these entities as “Ancestry” and distinguish among them only if necessary to ensure accuracy and clarity. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2. Since 2008, I have been employed by Ancestry, a genealogy company that owns and operates the public website Ancestry.com. As part of my job responsibilities, I am familiar with Ancestry’s operations and record keeping, and I have reviewed Ancestry’s business records and other documents that provide the basis for my statements. Through this review and based on my personal knowledge, which I obtained through my employment, training and expertise at Ancestry, I have personal knowledge of the facts stated in this declaration.

3. According to Ancestry's business records, Benjamin Osborn created a free Ancestry account on November 20, 2020. A true and correct screenshot of the account summary for Mr. Osborn is attached hereto as **Exhibit 1**, which shows that he created his account on November 20, 2020.

4. When Mr. Osborn activated his Ancestry account on November 20, 2020, he was required to provide his full name and email address, and he was required to create a password. A true and correct copy of the requisite sign-up form he filled out is attached hereto as **Exhibit 2**.

5. After Mr. Osborn filled out the form, but before he could click "Save and continue" to activate his account, Ancestry advised him of the following:

By clicking "Save and continue" below, you agree to the Ancestry Terms and Conditions and Privacy Statement and agree Ancestry may contact you via email about their products and services, such as family tree hints and updates and promotional offers and events, that help you unlock your past to inspire your future. You can unsubscribe or customize your email settings at any time.

6. This notification, which Mr. Osborn received on November 20, 2020, contained a visible hyperlink to the Ancestry Terms and Conditions. The notice was conspicuously located directly under the name, email, and create password fields, and directly above the "Save and continue" button. Mr. Osborn was required to click the "Save and continue" button to activate his Ancestry account. Exhibit 2 contains a true and correct screenshot of the notification that appeared on Ancestry's account creation page when Mr. Osborn visited the site to activate his account on November 20, 2020.

7. By clicking "Save and continue," Mr. Osborn created his online account and agreed to abide by Ancestry's Terms and Conditions. A true and correct copy of the Terms and Conditions in effect on November 20, 2020 and to which Mr. Osborn agreed to be bound is attached hereto as **Exhibit 3**.

8. As shown in Exhibit 3, among other provisions, Ancestry's September 23, 2020 Terms and Conditions, to which Mr. Osborn agreed, provided that Ancestry might update its Terms

and the updates would take effect 30 days after notice of the changes, provided Mr. Osborn continued to use Ancestry's services.

9. After Mr. Osborn activated his account on November 20, 2020 Ancestry updated Mr. Osborn's Terms and Conditions on May 10, 2021, and August 3, 2021.

10. Each time Mr. Osborn's Terms and Conditions were updated, Ancestry notified Mr. Osborn of the updates to the Terms and Conditions. With respect to the May 10, 2021 updates, Ancestry placed a 30-day notice on its website alerting users that new terms would take effect May 10, 2021 and placed the word "updated" in prominent text at the bottom of the webpage next to the persistent footer containing a link to Ancestry's Terms and Conditions. With respect to the August 3, 2021 updates to the terms and conditions, Ancestry gave notice of that update to its users, including Mr. Osborn, via email. Attached as **Exhibit 4** is a true and correct copy of the standard email users, including Mr. Osborn, received as notification of the August 3, 2021 updates to their applicable Terms and Conditions. In addition, Ancestry also gave notice to Mr. Osborn of the August 3, 2021 updated Terms and Conditions by placing a prominent banner at the top of its website that appeared on a page Mr. Osborn was required to view when accessing his account. The banner contained a visible hyperlink to the updated Terms and Conditions. Attached as **Exhibit 5** is a true and correct copy of that banner.

11. Attached hereto as **Exhibits 6** and **7** are true and correct copies of the updated Terms and Conditions that went into effect on May 10, 2021 and August 3, 2021, respectively, and for which Mr. Osborn received notice of the updates, as described above.

12. After these updates to his Terms and Conditions, Mr. Osborn continued to use Ancestry's services and did not delete his account or request that it be deleted.

13. According to Ancestry's business records, on May 23, 2022 and May 25, 2022, Benjamin Osborn searched for and accessed Joshua Braundmeier's yearbook records via Ancestry.com by using his Ancestry account.

14. According to Ancestry's business records, on May 31, 2022, Benjamin Osborn searched for and accessed Kevin Wallace's yearbook records via Ancestry.com by using his Ancestry account.

15. Ancestry's Terms and Conditions are available to all users of Ancestry.com, including via the website's persistent footer. This hyperlinked footer is constantly available on all Ancestry.com webpages, including the search page, results page, and the membership options page. Those who use Ancestry's website, including by conducting a search for yearbook records or accessing them, agree to Ancestry's Terms of Service.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed September 23, 2022.

By: _____
DocuSigned by:
Todd Godfrey
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Vice President, Global Content,
Ancestry.com Operations Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on September 23, 2022, I caused a true and correct copy of the foregoing to be filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record via the Court's CM/ECF automated filing system.

/s/ Shon Morgan

Shon Morgan